

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:19 CR 128 MOC WCM

UNITED STATES OF AMERICA)
)
) ORDER
v.)
)
)
PAUL MARTIKAINEN)
)

This matter is before the Court on Defendant's Response to Magistrate's Order (Doc. 43) and the Government's Second Request for a Sell Hearing (Doc 44).

On January 7, 2021, the undersigned issued an Order which, among other things, 1) granted the Government's request for a hearing to determine whether Defendant should be hospitalized for an additional period pursuant to 18 U.S.C. § 4241(d)(2)(A), 2) directed that any request by either party that the hearing be conducted remotely be filed within two (2) days, 3) denied without prejudice a request by the Government that the Court also conduct a hearing to determine whether, pursuant to Sell v. United States, 539 U. S. 166 (2003), Defendant should be medicated involuntarily, and 4) directed defense counsel to advise whether Defendant seeks a detention hearing. Doc. 36.

On January 8, 2021, the Government requested that witnesses from FMC Butner be allowed to testify remotely and Defendant requested that he

not be transported back to this district and that the hearing be conducted remotely. Docs. 37 & 38.

The Court granted those requests on January 11, 2021 and directed that Defendant remain at FMC Butner and permitted him to appear remotely for the upcoming proceeding. Doc. 39.

On January 13 and 14, 2021, additional documents from FMC Butner, including a forensic addendum and a proposed treatment plan, were filed on the docket. Docs. 40, 41, 42.

On January 14, the Government submitted its current filing which renews its request for a Sell hearing in view of the additional materials from FMC Butner. Doc. 44. Specifically, the Government requests that during and in connection with the proceeding that has been scheduled for January 20, 2021 to determine whether an additional period of hospitalization should be ordered for Defendant pursuant to 18 U.S.C. §4241 (d)(2)(A), the Court hear evidence regarding application of the Sell factors.

Likewise, on January 14, defense counsel responded to the January 7 Order.

As noted, the undersigned previously authorized Defendant to remain at, and participate from, FMC Butner during the hearing regarding potential additional hospitalization pursuant to Section 4241(d)(2)(A). Doc. 39.

The parties' recent filings do not, however, address the issue of Defendant's presence or participation—either in person or remotely—at a Sell hearing (should the Court conduct one as the Government again requests) or a detention hearing (should one become appropriate as Defendant describes).

While mindful of the need to move forward promptly with a disposition of the pending questions regarding the possible restoration of Defendant's competency, the undersigned finds that, particularly in light of the Government's renewed and now unopposed request that the Court conduct a Sell hearing and consider the involuntary medication of Defendant, the parties should be given the opportunity to address procedural and logistical arrangements for the upcoming competency-related proceedings. For example, the undersigned wishes to ensure that issues concerning Defendant's rights and ability to participate in a Sell hearing have been fully considered, such as whether Defendant's physical presence is required in the courtroom or whether he may participate remotely, or whether he may waive his participation altogether. In addition, to the extent that witnesses, Defendant, or others, may be participating remotely, it is necessary to determine that appropriate technology is in place to allow the hearing to be conducted in a smooth and orderly fashion.

Accordingly, the hearing that has been scheduled for January 20, 2021, to determine whether Defendant should be hospitalized for an additional period pursuant to Section 4241(d)(2)(A) will be **CANCELED** and, at that time, the undersigned will instead hold a hearing on Defendant's Response to Magistrate's Order (Doc. 43) and the Government's Second Request for a Sell Hearing (Doc 44).

It is so ordered.

Signed: January 15, 2021



W. Carleton Metcalf
United States Magistrate Judge

